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CLERK'S OFFICE, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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5 **UNITED STATES DISTRICT COURT**  
6 **NORTHERN DISTRICT OF CALIFORNIA**

7 CLARKE and REBECCA WIXON and  
8 NORMAN and BARBARA WIXON, on  
9 behalf of themselves and all others similarly  
situated,

10 Plaintiffs,

11 v.

12 WYNDHAM RESORT DEVELOPMENT  
13 CORP. (f/k/a Trendwest Resorts, Inc.), GENE  
14 HENSLEY, DAVID HERRICK, JOHN  
15 HENLEY, PEGGY FRY, and JOHN  
16 McCONNELL, and nominally,  
17 WORLDMARK, THE CLUB.

Defendants.

Case No.: C 07-02361 JSW

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**DECLARATION OF VANDY M.  
HOWELL, Ph.D. IN SUPPORT OF  
CORNERSTONE RESEARCH'S  
OPPOSITION TO PLAINTIFFS'  
MOTION TO ENFORCE RECORDS  
SUBPOENA**

**CLASS AND DERIVATIVE ACTION**

Date: July 1, 2009  
Time: 10:00 a.m.  
Before: The Hon. Bernard Zimmerman

1 I, Vandy M. Howell, Ph D., declare as follows:

2 1. I am a Vice President with Cornerstone Research ("Cornerstone"). I make this  
3 declaration based on my personal knowledge. If called to testify to the contents hereof, I could  
4 and would competently do so. This declaration is made in support of Cornerstone's Opposition to  
5 Plaintiffs' Motion to Enforce Records Subpoena (Dkt. No. 318).

6 2. Cornerstone was retained by Troutman Sanders LLP to act as that firm's  
7 consulting expert in this litigation in June 2008. Dr. Michael Keeley served as the lead consulting  
8 expert and has been assisted by me, Dr. Celeste Saravia, and certain analysts. A copy of the  
9 retention agreement is attached to the Declaration of Elizabeth C. Pritzker in Support of  
10 Plaintiffs' Motion to Enforce Records Subpoena ("Pritzker Dec.," Dkt. No. 319), as Ex. A (Dkt.  
11 No. 319-2).

12 3. After Plaintiffs designated their testifying expert (Dr. Russell Lamb), Dr. Keeley  
13 was designated as a testifying expert on behalf of WRDC. His expert report was produced on  
14 May 5, 2009.

15 4. Cornerstone, independent of Dr. Keeley, continues to the present time to serve as a  
16 consulting expert to WRDC.

17 5. Plaintiffs served a document subpoena on Dr. Keeley on May 5, 2009 (the "Keeley  
18 Subpoena"). [Pritzker Dec., Ex. E (Dkt. No. 319-9, which is a copy of the Keeley Subpoena).]

19 6. To the best of my knowledge and understanding, Dr. Keeley, with assistance from  
20 me and others at Cornerstone, collected and produced to Plaintiffs documents responsive to the  
21 Subpoena on May 5, 2009. All documents relied upon by Dr. Keeley have been produced. Since  
22 the issuance of the subpoena to Cornerstone on May 13, 2009 (the "Cornerstone Subpoena"),  
23 Cornerstone has conducted an additional search for any document which may have been reviewed  
24 or considered by Dr. Keeley in forming his opinions, and has determined that there are a limited  
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1 number of additional documents which Dr. Keeley will make available by way of supplement to  
2 the May 5, 2009 production. The additional documents were inadvertently omitted from the prior  
3 production by Dr. Keeley and consist of certain drafts which were located as a result of inquiry to  
4 Cornerstone team members other than Dr. Keeley.

5       7. Except for documents previously produced to Plaintiffs, the May 5 production and  
6 Cornerstone's anticipated supplemental production include all documents and data made  
7 available to Dr. Keeley in forming his opinions and drafting his report, regardless of whether he  
8 relied upon the documents or data and regardless of the source of the documents or data, and any  
9 documents or data created by Dr. Keeley. No documents or data made available to, or created by,  
10 Dr. Keeley have been withheld from production to Plaintiffs on any basis, including work  
11 product, attorney-client privilege, or Fed. R. Civ. P. 26(b)(4)(B). The documents and data made  
12 available to Dr. Keeley in this matter are listed on Appendix C to Dr. Keeley's expert report.

13 [Declaration of A. William Loeffler, dated May 8, 2009, Ex. 1 (Doc. # 273-6).] If data or a  
14 document were created or utilized in the forming of Dr. Keeley's opinions or the drafting of his  
15 report, it was listed on Appendix C and produced to Plaintiffs. On behalf of Cornerstone, I  
16 believe that the response to the Keeley Subpoena, as supplemented, will be complete and omits  
17 nothing that was relied upon, reviewed, or considered by Dr. Keeley which I understand was what  
18 was required to be produced.

19       8. On May 13, 2009, Plaintiffs served a subpoena on Cornerstone (the "Cornerstone  
20 Subpoena"), which contains fifteen requests for documents falling roughly into two categories:  
21 (1) documents considered or compiled in connection with the formulation of, or that support,  
22 refute, or form the basis of, Dr. Keeley's expert opinions (*see e.g.*, Cornerstone Subpoena  
23 Request Nos. 3-7); and (2) all other documents or analyses that Cornerstone received, reviewed,  
24 compiled, or created in connection with its retention as a consulting expert, including  
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1 communications sent to or received by Cornerstone relating to its consulting services in this  
2 matter (see, e.g., Cornerstone Subpoena Requests Nos. 1-2, 8-15). [Pritzker Dec., Ex. G (Dkt.  
3 No. 319-11, which is a copy of the Cornerstone Subpoena).]

4 9. I understand the first category of documents to seek the same documents that were  
5 already produced by Dr. Keeley on May 5, 2009, pursuant to Plaintiffs' Subpoena to him. There  
6 are no responsive documents that have not already been produced.

7 10. I understand the second category to seek documents that were segregated from,  
8 and not provided or made available to, Dr. Keeley, not reviewed, considered, or relied upon him  
9 in forming his opinions and drafting his report, and not utilized by him in preparing for or giving  
10 his expert testimony in this matter. These documents have been maintained confidentially by  
11 Cornerstone in its capacity as a consultant for Troutman Sanders LLP and have not been shared  
12 with Dr. Keeley or anyone else. The requested materials would include communications between  
13 Troutman Sanders LLP and Cornerstone, in its consulting capacity, that did not involve Dr.  
14 Keeley, were not shared with Dr. Keeley, and did not form a part of Dr. Keeley's opinions or  
15 report. These materials also would include documents, data, and other materials received by or  
16 created by Cornerstone in its consulting capacity that were not shared with Dr. Keeley nor formed  
17 a part of his opinions or report.

18 11. Cornerstone served its objection to the Cornerstone Subpoena on Plaintiffs'  
19 counsel on May 19, 2009. [Pritzker Dec., Ex. H (Dkt. No. 319-12, which is a copy of the  
20 Cornerstone Objection).]

1 I declare under penalty of perjury that the foregoing facts are true and correct and that this  
2 declaration was executed this 10<sup>th</sup> day of June, 2009, in San Francisco, California.

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5 Vandy M. Howell, Ph.D.  
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**CERTIFICATE OF SERVICE**

**Wixon v. Wyndham Resort Development Corporation, et al.**  
USDC, Northern District of California

I hereby certify that, on June 10, 2009, I served the foregoing by U.S. Mail on all parties as follows:

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29 *Attorneys for Defendant Wyndham Resort Development Corporation*

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